

Louis “Chip” Edleson (SBN CA 097195)  
EDLESON & HINDMAN  
225 Broadway, Suite 2220  
San Diego, California 92101  
Telephone: (619) 230-8402  
Email: [ce@erhlawfirm.com](mailto:ce@erhlawfirm.com)

Attorneys for Plaintiff  
CHARLES RESTIVO

JACKSON LEWIS P.C.  
CAROLYN G. BURNETTE (SBN 191294)  
SAMUEL J. MASELLI (SBN 219503)  
400 Capitol Mall, Suite 1600  
Sacramento, CA 95814  
Telephone: (916) 341-0404  
Facsimile: (916) 341-0141  
E-mail: [carolyn.burnette@jacksonlewis.com](mailto:carolyn.burnette@jacksonlewis.com)  
[samuel.maselli@jacksonlewis.com](mailto:samuel.maselli@jacksonlewis.com)

Attorneys for Defendants  
COGSWELL COLLEGE, LLC  
and BRAD PALMER

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

CHARLES RESTIVO,

Plaintiff,

v.

COGSWELL COLLEGE, LLC doing business as  
the University of Silicon Valley, BRAD  
PALMER, PALM VENTURES, LLC and DOES  
1 to 5,

Defendants.

Case No. 5:23-cv-01548-PCP

*Honorable P. Casey Pitts*

**JOINT CASE MANAGEMENT  
STATEMENT AND [PROPOSED]  
ORDER**

Date: January 23, 2024

Time: 1:00 p.m.

Location: Courtroom 8 / ZOOM

Complaint Filed: February 14, 2023

Removal Filed: March 31, 2023

Trial Date: None Set

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The Parties to the above-entitled action jointly submit this Joint Case Management Statement and Proposed Order pursuant to Civil Local Rule 16-9 and the Standing Order for All Judges of the Northern District of California.

**1. Jurisdiction and Service**

Defendants removed this action on the grounds that this Court has original jurisdiction pursuant to the HEA, 20 U.S.C. § 1094, et seq., and 34 CFR § 668.14(b)(22), and the provisions of 28 U.S.C. § 1331 and 28 U.S.C. § 1441, as well as pendent jurisdiction over Plaintiff's state law and common law claims pursuant to 28 U.S.C. § 1367. Plaintiff disputes this Court's jurisdiction, and the Parties continue to meet and confer on this issue while pursuing further settlement discussions with the Court. There are no other existing issues regarding personal jurisdiction or venue, and there are no parties that remain to be served. On December 5, 2024, Defendant Palm Ventures, LLC was dismissed without prejudice.

**2. Facts**

This is an employment related dispute. Cogswell College, LLC ("Cogswell") operates the University of Silicon Valley (formerly known as Cogswell Polytechnical College), a private university located in San Jose, California. Cogswell hired Plaintiff Charles Restivo as its CEO on June 4, 2018, at which time the Parties entered into a written Employment Agreement. Cogswell subsequently terminated Mr. Restivo's employment on November 14, 2022.

Plaintiff now contends that Cogswell wrongfully terminated his employment, failed to pay him wages, severance, and equity, and made intentional misrepresentations in order to induce Plaintiff to accept this offer of employment. Defendants deny any wrongdoing.

Plaintiff's Complaint alleges the following eight causes of action against Defendants: (1) Unpaid Wages; (2) Breach of Contract; (3) Conversion; (4) Wrongful Termination in Violation of Public Policy; (5) Misrepresentation in violation of California Labor Code section 970; (6) Promissory Fraud in violation of California Civil Code section 1710; (7) Intentional Misrepresentation; and (8) Breach of Implied Covenant of Good Faith and Fair Dealing. Defendants deny Plaintiff's allegations.

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Principal factual issues in dispute include, but are not limited to, whether Defendants wrongfully terminated Plaintiff's employment, owe him unpaid wages and attendant penalties, breached the Parties' Employment Agreement, made intentional misrepresentations to him and promises without an intent to perform.

**3. Legal Issues**

Legal issues raised by the Complaint are: (1) whether Defendants are liable for the claims asserted in Plaintiff's Complaint; and (2) the amount of any damages, if any. Additional legal issues remain regarding subject matter jurisdiction as well as the questions raised by Defendants' Motion to Dismiss (discussed below).

**4. Motions**

Defendants removed this action from the Superior Court of the State of California, County of Santa Clara, to the United States District Court for the Northern District of California on March 31, 2023. Defendants subsequently filed a Motion to Dismiss, which was set for hearing on September 14, 2023. Plaintiff anticipates filing a Motion to Remand based on lack of subject matter jurisdiction. Defendants anticipate filing motions for summary judgment or for partial summary judgment should this Court deny their Motion to Dismiss.

**5. Amendment of Pleadings**

The Parties anticipate no amendment of pleadings, unless in response to a ruling on Defendants' Motion to Dismiss. The Parties propose a deadline for any amendments of 15 days following the issuance of a ruling on Defendants' Motion to Dismiss.

**6. Evidence Preservation**

The Parties certify their compliance regarding the Court's ESI Guidelines.

**7. Disclosures**

The Parties served their initial disclosures pursuant to General Order No. 71.

**8. Discovery**

The Parties have exchanged their Initial Disclosures and accompanying document productions. Plaintiff Charles Restivo propounded Requests for the Production of Documents to Defendants Cogswell College, LLC and Brad Palmer, to which Defendants served written

1 responses on December 29, 2023 and will be producing non-privileged documents responsive to  
2 Plaintiff's requests during the month of January 2024. The Parties anticipate conducting multiple  
3 key depositions during the month of February prior to the Further Settlement Conference before  
4 Magistrate Judge Spero on March 14, 2024.

5 **9. Class Actions**

6 This is not a class action.

7 **10. Related Cases**

8 There are no related cases pending.

9 **11. Relief**

10 Plaintiff seeks monetary damages consisting of:

11 (a) Approximately \$800,000 under the Labor Code for unpaid wage claims:

- 12 i. \$614,896.50 for unpaid bonuses;
- 13 ii. \$136,500 for unpaid severance;
- 14 iii. \$43,418 for a waiting-time penalty under California Labor Code §§ 200(a)  
15 and 216(a);
- 16 iv. attorneys' fees and 10% interest under California Labor Code §§ 218.5 and  
17 218.6 to be determined at the time of trial;

18 (b) \$2,641,275 for the wrongful termination claim, consisting of future loss of salary,  
19 bonuses, and benefits;

20 (c) an amount equal to the value of 5% equity in Cogswell Education, LLC, and an  
21 amount equal to the value of two percent equity of Nightingale College (estimated to  
22 be about \$2 million).

23 In addition to these economic losses, Plaintiff will seek emotional distress damages,  
24 punitive damages, and double damages under Labor Code section 972 for misrepresentation.

25 **12. Settlement and ADR**

26 The Parties have participated in early settlement discussions before the Magistrate Judge  
27 Joseph Spero at a Settlement Conference on August 9, 2024, and have scheduled a Further  
28 Settlement Conference on March 14, 2024 before Magistrate Judge Spero.

1 **13. Other References**

2 The Parties do not believe any other references would be necessary or proper at this time.

3 **14. Narrowing of Issues**

4 At this early stage, the Parties have not yet identified areas where they may narrow the  
5 issues in dispute but will revisit this issue as discovery progresses.

6 **15. Expedited Trial Procedure**

7 At this early stage, the Parties have not decided whether an expedited trial procedure  
8 would be appropriate or agreeable.

9 **16. Scheduling**

10 At present, the Parties propose to defer the scheduling of dates. Instead, they propose that  
11 they submit a further joint Case Management Statement within 30 days of completion of their  
12 second settlement conference, which is scheduled to commence on March 14, 2024.

13 **17. Trial**

14 Plaintiff has demanded a jury trial. At this stage, estimating the length of trial is difficult. The  
15 Parties will be in a better position to determine the length of trial following key case depositions in  
16 February 2024 that will be conducted before the Parties participate in the Further Settlement Conference  
17 before Magistrate Judge Spero on March 14, 2024. As such, the Parties propose deferral of making an  
18 initial estimate of the length of trial until submission of the next Joint Case Management Statement.

19 **18. Disclosure of Non-Party Interested Entities or Persons**

20 The Parties certify their compliance regarding disclosure of interested entities or persons.  
21 Plaintiff filed no certification because he has no non-party interested entities or persons. Defendants'  
22 certification lists the following persons, associations of persons, firms, partnerships or other entities  
23 who have a financial interest in the subject matter in controversy or in a party to the proceeding or  
24 have a non-financial interest in that subject matter or in a party that could be substantially affected by  
25 the outcome of this proceeding:

- 26 1. Charles Restivo - Plaintiff;
- 27 2. Cogswell College, LLC - Defendant;
- 28 3. Brad Palmer - Defendant;

4. Palm Ventures, LLC - Defendant; and

5. Greenberg Traurig, LLP - Counsel for Defendants.<sup>1</sup>

**19. Professional Conduct**

All attorneys of record for the Parties have reviewed the Guidelines for Professional Conduct for the Northern District of California.

**20. Other**

The Parties are unaware of other matters beyond those previously stated.

Dated: January 9, 2024

EDLESON, REZZO & HINDMAN

*/s/ Louis "Chip" Edleson*

By: \_\_\_\_\_  
Louis "Chip" Edleson

Attorneys for Plaintiff  
CHARLES RESTIVO

Dated: January 9, 2024

JACKSON LEWIS P.C.

*/s/ Samuel J. Maselli*

By: \_\_\_\_\_  
Carolyn G. Burnette  
Samuel J. Maselli

Attorneys for Defendants  
COGSWELL COLLEGE, LLC and  
BRAD PALMER

<sup>1</sup> Please note that Greenberg Traurig LLP withdrew as Defendants' counsel of record on November 29, 2023.

**CASE MANAGEMENT ORDER**

The above Joint Case Management Statement and Proposed Order is approved as the Case Management Order for this action, and all Parties hereto shall comply with its provisions.

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_

By: \_\_\_\_\_

United States District Court Judge